IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2067 of 2006
With
CIVIL APPLICATION No. 7509 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO. LTD - Appellant(s)
Versus
LEGAL HIERS OF DECD. DAXABEN RAJESHKUMAR PANCHAL & 7 - Defendant(s)

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Appearance :
MR KK NAIR for Appellant(s) : 1,
MR HIREN MODI for respondents Nos.1 & 2.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. In the First Appeal, this Court had issued notice, while in the Civil Application for stay, rule was issued. Learned advocate Shri Hiren Modi appears for respondents Nos.1 and 2 - original claimants. In the facts of the case, it is not necessary to await service of notice on respondent No.3 who was the owner of the offending vehicle involved in the accident.

2. Appeal is admitted. Learned advocate Mr.Hiren Modi waives service of notice of admission of appeal on behalf of respondents Nos.1 & 2. At the joint request of the learned advocates appearing for the parties, the First Appeal as well as the Civil Application for stay are taken up for final disposal today.

3. On 2nd June 2002, respondent No.1 Rajeshkumar Parsotamdas Panchal was riding his motor cycle with his wife Daxaben Rajeshkumar as a pillion rider. They were going on Bavla-Bagodara Road and while passing Ramnagar Patia, the vehicle met with an accident with a Dumper bearing registration No.GJ-3-V-8065 in which Daxaben received serious injuries and died on account of such injuries. The claimants i.e. husband of deceased Daxaben and her minor daughter Amiben, aged 4 years on the date of the accident, therefore, filed Claim Petition No.643 of 2002 before

the Motor Accident Claims Tribunal (Aux.), Ahmedabad City.

4. By the judgment and award dated 9th March 2006, the Claims Tribunal partially allowed the Claim Petition. Out of the claim of Rs.20 lacs made by the claimants, the Tribunal was pleased to award a sum of Rs.10,37,600/- in favour of the claimants. The amount was to be paid with interest at the rate of 9 per cent per annum from the date of Claim Petition till realization.

5. The appellant Insurance Company, insurer of the Dumper, has therefore filed this appeal challenging the amount of compensation granted by the Claims Tribunal. The appellant has restricted the claim in appeal to Rs.1,74,000/-. The entire appeal is directed against the quantum of compensation.

6. In view of the fact that no dispute has been raised by the appellant Insurance Company with the nature of the accident and the finding of the Claims Tribunal regarding negligence of the driver of the Dumper in causing the accident, it is not necessary to discuss at length the evidence on record regarding these aspects of the matter.

7. As noted earlier, the appellant Insurance Company has disputed the award to the extent of Rs.1,74,000/- and thus limited the appeal to the said amount.

8. After holding that deceased Daxaben died on account of the serious injuries received by her in the motor vehicle accident and holding that the driver of the Dumper was negligent in causing the accident, the Claims Tribunal proceeded to quantify the amount of compensation to be paid to the claimants. In this regard, the Tribunal was pleased to notice that the deceased was serving as a primary school teacher; that she was aged 30 years on the date of the accident and that her salary on the date of the accident was approximately Rs.7,000/-. The Tribunal set apart one-third of the salary of the deceased for her personal expenditure and worked out a sum of Rs.5900/- per month as the dependency benefit of the claimants. The Tribunal adopted the multiplier of 17 and thus found that a sum of Rs.10,32,600 (Rs.5900 x 12 x 17) should be awarded to the claimants for loss of dependency benefit. To this figure, a sum of Rs.5,000/- was added towards funeral expenses. In conclusion, the Tribunal awarded a total compensation of Rs.10,37,600/- to the claimants.

9. Learned advocate Shri Nair for the appellant Insurance Company submitted that there is an apparent arithmetical error in calculation of the compensation by the Tribunal. After deducting one-third out of Rs.7,000/- per month, which was assessed as the salary of the deceased, the dependency benefit for the claimants would come to Rs.4700/- per month

instead of Rs.5900/- as adopted by the Claims Tribunal. He further submitted that considering the fact that husband of the deceased was also an employee in Security Service and was aged about 32 years on the date of the accident and the possibility of his remarriage, adopting multiplier of 17, in the facts of the case, was not justified.

10. On the other hand, learned advocate Shri Hiren Modi for the claimants supported the impugned judgment and award. He submitted that the amount awarded by the Claims Tribunal is just and proper. He pointed out that the Tribunal did not award any compensation towards conventional heads of loss to the estate and loss of consortium.

11. Having heard the learned advocates appearing for the parties, we find that the award made by the Claims Tribunal requires some modification.

12. The Tribunal from the evidence on record came to the conclusion that the deceased while serving as a primary school teacher in a school run by the Gram Panchayat was earning Rs.7000/- per month. Out of the said sum, one-third or Rs.2300 (approximately) should be set apart for the personal expenditure of the deceased. This would leave Rs.4700/- which the deceased would have contributed for the family expenditure. Thus assessing the dependency benefit at Rs.4700/- per month, the family would be at a loss of Rs.56,400/- per annum.

Considering the facts of the case, where the claimants are husband and minor daughter aged 4 years and considering the fact that the husband himself was employed elsewhere in a regular service with some possibility of remarriage, multiplier of 15 would be appropriate. Thus, the loss of dependency benefit for the family would be worked out to Rs.8,46,000/- (Rs.56,400 x 15).

13. The learned advocate Shri Modi was justified in contending that the Tribunal ought to have awarded appropriate amounts under the conventional heads of loss to the estate and loss of consortium. Awarding Rs.20,000/- for loss to the estate and Rs.10,000/- towards consortium and maintaining Rs.5000/- as awarded by the Tribunal for funeral expenses, the total amount to be awarded in favour of the claimants would be worked out as follows:-

1.	Rs.8,46,000	For loss of dependency benefit
2.	Rs. 20,000	For loss to the estate
3.	Rs. 10,000	For loss of consortium
4.	Rs. 5,000	For funeral expenses
	Rs.8,81,000/-	

14. In the result, the appeal is partly allowed. The amount awarded by the Claims Tribunal is reduced from Rs.10,37,600/- to Rs.8,81,000/-. The award is accordingly modified.

15. By order dated 5th July 2006, while issuing rule in the Civil Application for stay, this Court had required the appellant Insurance Company to deposit 50 per cent of the amount awarded by the Claims Tribunal along with proportionate interest and costs. The appellant Insurance Company shall deposit the further amount as per the modified award before the Claims Tribunal within a period of four weeks from today.

The amount of Rs.25,000/- deposited by the appellant Insurance Company at the time of filing the appeal shall be transmitted to the Claims Tribunal within three weeks from today.

16. Upon deposit and transmission of the amounts as aforesaid, the Tribunal shall invest 90% of the amount in fixed deposit with a nationalised bank near the residence of the claimants for a period of five years in the name of claimant No.2, i.e. minor Amiben Rajeshkumar Panchal with usual conditions about prohibition against premature encashment of/encumbrance over the deposit and a direction to the bank not to permit the bank account of the claimants to be operated by any power of attorney holder other than a close relative of the claimants. Periodic interest accruing on such fixed deposit will be paid over to the minor through her guardian. The remaining amount shall be disbursed to the claimants to be paid over to claimant No.1 by account payee

cheque after proper verification.

17. With these directions, the appeal is allowed in part and is disposed of accordingly.

18. In view of the disposal of the main appeal, Civil Application for stay is also disposed of accordingly.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)